

## REMARKS/ARGUMENTS

In the Office Action mailed June 10, 2009, claims 8-28 and 31 were subject to restriction and election.

### Identification of Claims

The Office Action identifies the following species corresponding to the claims of the present application:

<u>Species</u>	<u>Claims</u>
I	16-24
II	25-28

For reference, the Office Action recognizes that claim 8 links the identified inventions I and II. Hence, claim 8 is considered a linking claim for the indicated inventions I and II. Applicants agree that claim 8 should be considered a linking claim. Linking claims must be examined with, and are thus considered part of, the invention elected. MPEP 809. In the event that the restriction requirement is not withdrawn prior to an indication of allowability of the linking claim, the restriction requirement between the linked inventions shall be withdrawn upon allowance of the linking claim. Id.

Also for reference, the Office Action indicates that claims 9-15 and 31 will be examined along with any claims corresponding to the elected invention because there would be no burden to search and examine these claims together with the linking claim and the claims corresponding to the elected invention. Applicants agree that the search and examination of claims 9-15 and 31 with the linking claim and the claims corresponding to the elected species would not cause a serious burden on the Examiner.

### Election of Species

Applicants hereby elect Species I, as identified by the Examiner, for prosecution on the merits. Claims 16-24 correspond to Species I, as identified by the Examiner. According to the requirements of MPEP 809, claim 8 must be examined with the claims corresponding to the elected Species I, as identified by the Examiner, because claim 8 is a

linking claim. Also, claims 9-15 must be examined with the claims corresponding to the elected Species I, as identified by the Examiner, because there would not be a serious burden on the Examiner to search and examine these claims together with the linking claim and the claims corresponding to the elected species.

#### Traversal of the Requirement for Restriction

Applicants respectfully assert that the requirement for restriction is improper because the Examiner does not meet all of the criteria to establish a proper requirement for restriction. In order to make a proper requirement for restriction, the requirement must meet two criteria: 1) the inventions must be independent or distinct as claimed, and 2) the Examiner must show that there would be a serious burden on the Examiner if restriction were not required. MPEP 803. In light of these criteria, Applicants assert that the Examiner does not satisfy the requirements to establish a proper requirement for restriction because the Examiner does not show that there would be a serious burden on the Examiner to search and examine together the claims corresponding to the identified species.

In order to show that there might be a serious search and examination burden if restriction were not required, the Examiner lists five separate reasons designated as (a) through (e). In regard to three of these reasons (b), (d), and (e), the Examiner does not provide any explanation to show how those reasons specifically might apply to the claims of the present application. Therefore, Applicants submit that reasons (b), (d), and (e) are not properly supported and, hence, cannot be relied on to show that there might be a serious search and examination burden if restriction were not required. In regard to the other two reasons (a) and (c), both of these reasons essentially rely on the same basis, which is that the inventions have different classifications. In particular, these reasons both rely on different classifications to show that either (a) the inventions have acquired a separate status in the art, or (c) the inventions require a different field of search.

In regard to reasons (a) and (c), which both rely on the different classifications of the claims corresponding to the indicated species, Applicants understand that separate classifications generally can be the basis to show that there would be a serious burden on the Examiner to search and examine together the claims corresponding to different

species. However, in the present case, the separate classifications presented by the Examiner in the present requirement for restriction cannot be viewed in isolation because the Examiner has already performed the necessary work to search and examine all of the indicated claims, at least for rejections presented in each of the past two Office Actions. If the search and examination has already been performed, then there would be no burden to continue to rely on the same search and examination process that has already been performed. Moreover, to the extent that further search and examination may be performed, the Examiner should be required to show how the further search and examination would be substantially different from the search and examination that has already been performed. And if there is no substantial difference between the search and examination that has already been performed and the further search and examination that yet might be performed, then there could not be a serious burden to continue with examination of all of the claims based on the search and examination that has already been performed. Additionally, if there is only a trivial difference between the type of searching and examination that has already been performed and the type of further searching and examination that might be performed, then the resulting burden on the Examiner would merely be a trivial burden, instead of a serious burden.

Thus, in this case, the determination that separate classifications of the claims might present a burden to search and examine the claims should be offset, or completely negated, by the fact that the search and examination has already been performed to the extent necessary to present rejections of these claims. Furthermore, the mere difference in classifications should not be considered adequate to show that there might be search and examination burden without some showing by the Examiner to explain how further searching and examination might be substantially different from the searching and examination that has already been performed.

Therefore, in light of the facts of this case in which the Examiner has already performed searching and examination of the indicated claims, and the Examiner has not shown how further searching and examination might be substantially different from the searching and examination that has already been performed, Applicants assert that the requirement for restriction is improper because the Examiner's reliance on merely different classifications does not satisfy the criterion to show that there would be a

serious burden on the Examiner to search and examine together the claims corresponding to the identified species. Accordingly, Applicants respectfully traverse the requirement for restriction and request that the requirement for restriction be withdrawn.

### **CONCLUSION**

Applicants respectfully request consideration of the claims in view of the remarks made herein. A notice of allowance is earnestly solicited.

At any time during the pendency of this application, please charge any fees required or credit any over payment to Deposit Account **50-4019** pursuant to 37 C.F.R. 1.25. Additionally, please charge any fees to Deposit Account **50-4019** under 37 C.F.R. 1.16, 1.17, 1.19, 1.20 and 1.21.

Respectfully submitted,

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